

Remarks/Arguments:

Upon entry of this amendment, claims 1-21 will be pending in the application. Claims 1-9 were examined, and claims 10-19 stand withdrawn. Claims 1 and 2 are amended herein, as supported throughout the specification, for example, paragraph [0022] and Figures 1-15. Claims 20 and 21 are newly added, as supported throughout the specification, for example, paragraph [0015]. The amendments and new claims therefore do not introduce new matter.

35 U.S.C. §112, First Paragraph

Claims 1-9 stand rejected for allegedly failing to comply with the written description requirement. The Office Action states the specification does not describe how two parallel flow tracks can be present on one membrane. The amended claims do not recite flow tracks. The rejection, therefore, is moot.

To the extent the Office would maintain the rejection against the amended claims, Applicants disagree. Applicants submit herewith the declaration of Dr. Peter Schwind. As explained in the declaration and shown in Exhibit B, it is possible to position the groups of indicator zones on a single membrane such that the liquid sample flows through only a single group without the need for a divider or barrier. An example of the device shown in Exhibit B is described in Example 3 of the specification. Thus, the specification adequately describes the claimed subject matter.

35 U.S.C. §112, Second Paragraph

Claims 1-9 stand rejected as allegedly indefinite. The Office Action states it is unclear how two parallel flow tracks can be present on one membrane without a divider. The amended claims do not recite flow tracks. The rejection, therefore, is moot.

To the extent the Office would maintain the rejection against the amended claims, Applicants disagree. The declaration and accompanying Exhibit B demonstrate that it is possible for a liquid sample to flow through a single group of indicator zones without a divider or barrier separating the groups. Thus, the claims are definite.

35 U.S.C. §102(b)

Claims 1-9 stand rejected as allegedly anticipated by WO 88/08534 (May). May is said to teach a plurality of detection zones, an absorption region, and parallel flow tracks.

The amended claims clarify that the device comprises at least two indicator zones positioned substantially parallel to each other on a single membrane. May does not teach or suggest such a device. May describes devices with a single indicator zone on a single membrane (e.g., Fig. 3). Where May contemplates multiple indicator zones, they are arranged in series (page 11, lines 22-24), or on multiple membranes (page 12, lines 7-10 ("separate strips or sheets")). Because May does not teach or suggest all of the limitations of the claimed invention, it does not anticipate the claims.

35 U.S.C. §103(a)

Claims 1-9 stand rejected as allegedly obvious over U.S. 7,303,823 (Hardman) in view of May. The Office Action states Hardman describes a device having multiple indicator zones on a single porous material, but lacking an absorption region. The Office Action cites May as providing the absorption region, and suggests those of skill in the art would be motivated to make the modification by a desire to prevent backflow of excess fluid to the detection zone.

Hardman's device utilizes channels to control direction of fluid flow, and thus requires a physical barrier (e.g., "doping polymer") to separate indicator zones. In addition, Hardman's device uses a water-impermeable coating polymer attached to the porous material to define a bibulous compartment. Neither feature of Hardman is present in the claimed device. The Office Action has not ascertained the differences between the prior art and the claims as required. *Graham v. John Deere Co.*, 383 U.S. 1 (1966).

Hardman and May do not suggest that physical barriers are problematic, and thus do not provide a reason to one of skill in the art to remove them. The Office Action has not shown that the references provide a reason to prepare devices without a physical separator between indicator zones, and has not provided any explanation based on scientific reasoning that those of skill in the art would have considered it obvious to prepare such a device.

Because the references, considered alone or in combination, do not teach or suggest all of the limitations of the claimed device, and because no reason to modify the references to

arrive at the claimed device has been provided, the Office Action did not establish *prima facie* obviousness.

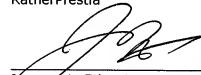
Obviousness Double Patenting

Claims 1-9 stand provisionally rejected for alleged obviousness-type double patenting over copending application 10/563,861. Applicants will address the rejection upon an indication of allowable subject matter, and request continued abeyance.

Applicants respectfully request reconsideration and withdrawal of the various rejections in light of the amendments and remarks made herein, and the declaration of Dr. Peter Schwind and its accompanying exhibits submitted herewith. A notice of allowance is requested.

Respectfully submitted,

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Attachment: Declaration of Dr. Peter Schwind with Exhibits A and B

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The Director is hereby authorized to charge or credit Deposit Account No. **18-0350** for any additional fees, or any underpayment or credit for overpayment in connection herewith.

I hereby certify that this correspondence is being electronically transmitted to: Commissioner for Patents, Alexandria, VA on December 22, 2008.



Kathleen P. Carney

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